

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

THOMAS EUGENE MOORE,

Petitioner,

No. CIV S-02-0007 DFL DAD P

vs.

A.A. LAMARQUE, et al.,

Respondents.

ORDER

Petitioner is a state prisoner proceeding pro se with a fourth amended petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. Before the court are requests by petitioner for an extension of time to file a fifth amended petition and motion to lift the stay, and an extension to file objections to the findings and recommendations filed on March 12, 2007.

This action was stayed on March 30, 2004. Because little or no progress had been made by petitioner to exhaust his unexhausted claims, on June 1, 2006, the court ordered petitioner to file a statement demonstrating that the action should continue to be stayed in light of the Supreme Court's decision Rhines v. Weber, 544 U.S. 269 (2005). Petitioner finally filed his statement following the granting of two extensions of time. On March 12, 2007, the undersigned issued findings and recommendations recommending that the stay be lifted. Therefore, plaintiff's request for an extension of time to file a motion to lift the stay is unnecessary and will be denied.

1 As to plaintiff's request for an extension of time to file his fifth amended petition, the request
2 will be denied without prejudice. Should the assigned District Judge adopt the undersigned's
3 findings and recommendations, petitioner may seek leave to file a fifth amended petition once the
4 stay is lifted. The court will order respondents to file their opposition or statement of non-
5 opposition with respect to any motion for leave to amend the fourth amended petition. Petitioner
6 is also advised that should he file a motion for leave to file a fifth amended petition, he must
7 attach his proposed fifth amended petition which includes all of his claims in that petition.¹

8 Petitioner's request for an extension of time to file his objections to the findings
9 and recommendations will also be denied. The court has recommended that the stay be lifted.
10 Petitioner has indicated that he also seeks to have the stay lifted. It is not necessary for petitioner
11 to file objections when he agrees with the undersigned's recommendation.

12 Accordingly, IT IS HEREBY ORDERED that:

13 1. Petitioner's March 15, 2007 motion for an extension of time to file a fifth
14 amended petition is denied without prejudice;

15 2. Petitioner's March 15, 2007 motion for an extension of time to file a motion to
16 lift the stay is denied as unnecessary; and

17 3. Petitioner's April 2, 2007 request for an extension of time to file objections to
18 the findings and recommendations is denied as unnecessary.

19 DATED: April 4, 2007.

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DALE A. DROZD
UNITED STATES MAGISTRATE JUDGE

24 ¹ Petitioner is reminded that the court cannot refer to prior pleadings in order to make his
25 fifth amended petition complete. Local Rule 15-220 requires that an amended petition be
26 complete in itself without reference to any prior pleading. This is because, as a general rule, an
amended petition supersedes the original petition. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir.
1967). Once plaintiff files a fifth amended petition, the prior pleading no longer serves any
function in the case.